
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. CV 10-1755-JST (RCx)

Date: February 28, 2011

Title: Kevin Stevens v. Selbert Perkins Design et al.

Present: **Honorable JOSEPHINE STATON TUCKER, UNITED STATES DISTRICT JUDGE**

Nancy Boehme
Deputy Clerk

N/A
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFF: ATTORNEYS PRESENT FOR DEFENDANT:

Not Present

Not Present

PROCEEDINGS: (IN CHAMBERS) ORDER REMANDING CASE TO LOS ANGELES SUPERIOR COURT, CASE NO. BC430356

This action was removed to federal court on March 10, 2010 on the basis of federal question jurisdiction pursuant to 28 U.S.C. § 1331. (Doc. 1.) On February 17, 2011, the parties filed a proposed Final Pretrial Conference Order which, for the first time, raised the issue of subject matter jurisdiction. Specifically, Plaintiff argued that he has alleged only state law claims and that there is no federal question jurisdiction. On February 23, 2011, this Court ordered Defendant to show cause in writing no later than February 28, 2011, at 9:00 a.m. why this action should not be remanded. Having considered Defendant's response to the Order to Show Cause, the Court now REMANDS this action to the Los Angeles Superior Court.

At the time of removal, Plaintiff's Complaint alleged four causes of action: (1) unpaid minimum wages in violation of California Labor Code section 1197; (2) failure to compensate for all hours worked in violation of California Labor Code section 1198; (3) illegal practices regarding rest periods in violation of California Labor Code section 226.7 and (4) unfair competition in violation of California Business and Professions Code section 17200 ("UCL claim"). Defendant's notice of removal states that, because Plaintiff's UCL claim alleged only violations of the federal Fair Labor Standards Act, Plaintiff's UCL claim "arise[s] under Federal law and this Court has federal question jurisdiction over this case." (Def.'s Notice of Removal, Doc. 1, ¶ 6.) Defendant's response to the Court's Order to Show Cause reiterates this argument. (Doc. 42.)

The Court disagrees. First, Defendant's description of Plaintiff's Complaint is inaccurate. Plaintiff does not allege that the FLSA provides the sole basis for the UCL claim. Rather, Plaintiff alleges "[v]iolating statutes, such as the FLSA . . . is also actionable as unfair competition," and then states "[a]ccordingly, Plaintiff may proceed in this Court on her [sic] UCL cause of action on an individual basis as she [sic] has suffered injury as a result of

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Defendant's conduct in not paying her all her wages and overtime as well as other violations of federal *as well as California law.*" (Pl.'s Compl. ¶¶ 31, 33 (emphasis added); *see also* Pl.'s First Am. Compl. ¶¶ 20, 22.) Hence, federal law is only one possible basis for finding a violation of the UCL. "Where a plaintiff has alleged a UCL claim based on both the violation of state and federal law courts have found that federal question jurisdiction does not exist." *Williams v. Wells Fargo Bank*, No. CV 10-4761, 2010 WL 3184248, at *4 (C.D. Cal. Aug. 9, 2010). Accordingly, the Court REMANDS this action to the Los Angeles County Superior Court, case no. BC430356. All future dates, including the trial date, are vacated.

Initials of Preparer: nkb